

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DONALD GRAHAM,	§	
	§	
Petitioner,	§	
	§	Civil Action No. 3:06-CV-1738-D
VS.	§	
	§	
NATHANIEL QUARTERMAN, Director,	§	
Texas Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
	§	
Respondent.	§	

ORDER

After making an independent review of the pleadings, files, and records in this case, and the February 5, 2007 findings, conclusions, and recommendation of the magistrate judge, the court concludes that the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted.

Alternatively, the court sustains respondent's objection and holds that petitioner's ineffective assistance of counsel claim must also fail because the state habeas court's finding "that the actions of trial counsel constituted sound trial strategy" did not result in a decision that was contrary to, or involve an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States, or result in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

All pending motions that petitioner filed after February 5, 2007 are denied. Specifically, the court denies petitioner's March 12, 2007 motion to file amended petition. Respondent filed his answer to the petition on December 21, 2006. Therefore, petitioner is not entitled to amend as of right. Although amendments should be liberally allowed, the decision whether to permit an

amendment to a petition after a responsive pleading has been filed is within the discretion of the district court. Here, granting leave to amend would be futile, and a district court may deny leave to amend a habeas petition on grounds of futility of the amendment. *See, e.g., Moore v. Balkcom*, 716 F.2d 1511, 1527 (11th Cir.), *modified on other grounds*, 722 F.2d 629 (11th Cir.1983).

SO ORDERED.

March 17, 2008.



SIDNEY A. FITZWATER
CHIEF JUDGE